IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8988 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MEHBOOBMIYA HUSAINMIYA SHAIKH

Appearance:

1. Special Civil Application No. 8988 of 2001

MR HARDIK C RAWAL for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/04/2002

ORAL JUDGEMENT

#. Heard Mr.H.C.Rawal, learned advocate appearing on behalf of the petitioner Corporation.

#. The petitioner Corporation has challenged the award passed by the labour Court, Vadodara in Reference No.389

/ 1996 dated 16th October, 2000, wherein the labour court has granted reinstatement with continuity of service and 50 % backwages of the interim period, so also awarded punishment of stoppage of one increment with cumulative effect. Learned advocate Mr.Rawal for petitioner Corporation has raised legal contention that the respondent workman remained absent without prior permission for a period of 23 days and ultimately after issuing chargesheet and on completion of departmental inquiry, the respondent workman was dismissed from service on 17th April, 1995. Thereafter, the respondent workman has approached the First Appellate Authority under the procedure. The appeal was heard by the First Appellate Authority and punishment of dismissal was set aside and modified by the authority while granting reinstatement without backwages of the interim period but imposed penalty of stoppage of five increments with permanent effect along with fine of Rs.6,000/- on the respondent workman. However, the respondent workman was not able to pay the amount of fine immediately enblock to the Corporation. Therefore, the workman had requested the authority for installment but the corporation was not agreed and therefore, the respondent workman has raised the industrial dispute before the labour court and the labour court has examined the validity of the order passed by the First Appellate Authority and therefore, the interference of the labour court is beyond jurisdiction of the labour court. The labour court cannot consider legality and validity of the order passed by the first appellate authority. Learned advocate Mr.Rawal has also raised contention that the past record is bad but the same was not considered by the labour court while granting such relief in favour of the respondent workman. Learned advocate Mr.Rawal for petitioner Corporation has submitted that when the petitioner Corporation was prepared to reinstate the workman but he had not reported for duty. It is also contended that the 50 % backwages granted by the labour court, amounts to loss caused to the Corporation for no default on the part of the Corporation. Therefore, the labour court has committed gross error in passing such award.

#. In respect of legal contention that the labour court has no power and jurisdiction to examine legality and validity of the order passed by the First Appellate Authority. However, it is noticed that no such contention was raised by the petitioner Corporation before the labour court either in the written statement or at the time of making submissions before the labour court. Therefore, naturally the labour court had no any

opportunity to examine this aspect and to pass appropriate orders on such contention. It is also necessary to note that this legal contention even has not been pleaded in this petition by the petitioner Corporation. In absence of such contention in this petition but when it is made in oral submission, this Court cannot permit the Corporation to raise such contention. Therefore, legal contention which has been raised by learned advocate Mr.Rawal cannot be accepted. For this contention, it is also answer to the Corporation to the effect that once the respondent workman was dismissed from service on 17th April, 1995, thereafter, the appellate authority has passed order of reinstatement on 14th December, 1995 granting reinstatement with continuity of service without backwages of interim period and stoppage of five increments with cumulative effect on respondent workman and also imposed fine of Rs.6,000/- on the respondent workman, at that time, from record it is required to be noted that the respondent workman was prepared to resume the duty with request to the petitioner Corporation that his financial position was not good and he was not able to pay this amount at a time to the Corporation and accordingly requested to give him some installments so that he could pay said amount of fine of Rs.6000/-. Considering such request of the respondent workman, if the petitioner Corporation had permitted the respondent workman to pay the amount of fine of Rs.6000/- in installment, then the respondent workman was prepared to resume the duty but surprisingly, such genuine request of the respondent was turned down by the corporation at the relevant time and therefore, an inference can be drawn to the effect that the petitioner Corporation had not allowed the respondent workman to resume the duty though the order was passed by the First Appellate Authority and thus, since the amount of fine imposed by the appellate authority could not be paid as directed at a time, it amounts to termination. Therefore, not to permit the respondent workman to report for duty, has been considered as termination and that is how the dispute has been raised by the respondent workman before the labour court to the effect that inspite of the order of reinstatement, the workman was not permitted to resume duty by the Corporation and accordingly termination was challenged. Therefore, in above view of the matter, the labour court has rightly considered the question which was raised before him by the respondent workman that even though the respondent workman was prepared to pay said amount to the Corporation in installments but such request of the respondent workman was turned down by the Corporation. Therefore, the labour court has examined the issue and come to the

conclusion that punishment of dismissal is harsh because the respondent workman had remained absent for 23 days and for that the workman had also submitted leave report immediately on the next date and medical certificate at the time of resuming duty and thus, considered that the order of punishment of dismissal is harsh. Moreover, the allegation made against the respondent workman that he remained absent for period from 17th October, 1994 to 31st October, 1994, 1st November, 1994 to 8th November, 1994, 18th November, 1994 to 19th November, 1994 and 28th November, 1994 to 29th November, 1994, in all for 25 days according to the petitioner Corporation. Therefore, chargesheet was served and ultimately, dismissal order was passed. The statement of claim was filed by the respondent vide Exh.3 and thereafter, Exh.4 and 5 written statement and inquiry papers were produced by the Corporation and then the workman was examined vide Exh.11 and he was not cross examined by the petitioner Corporation and therefore, right to cross examine the workman concerned has been closed by the labour court. Thereafter, the respondent workman closed his evidence wherein it is stated that the petitioner Corporation was insisting that fine of Rs.6000/- required to be paid at a time but his request made to the corporation for giving installments for the payment but that installment facility was not given and that is how he was not permitted to resume the duty. The petitioner Corporation has not produced any evidence that fine is not paid by the workman and therefore, the workman was not taken up on duty even though the order was passed by the First Appellate Authority of reinstatement. The labour court has examined the merits of the matter and framed the issue; whether the dismissal order passed by the competent authority is legal and valid or not. The labour court was aware about factual aspects that this is case of misconduct but this is case in which fine which was imposed by the First Appellate Authority was not paid by the respondent and that is how, he was not permitted to resume the duty by the Corporation and thus, whether the action of the corporation is proper or not. This question was examined by the labour court. After perusing the entire evidence, the labour court has come to the conclusion that though the respondent workman was prepared to pay the amount of fine in installments but it was not permitted by the Corporation and though the workman was ready and willing to resume the duty but it was not allowed by the Corporation because he was not able to pay the amount of fine of Rs.6000/- at a time. The labour court has come to the conclusion that leave report and medical certificate produced by the respondent workman has not been taken into consideration by the

inquiry officer. The respondent workman was sick during this period when he was on leave. Leave report was submitted by the respondent workman on 19th October, 1994 to the Depot Manager, Makkarpura and that leave report was received by the Depot Manager, Makkarpura on 19th November, 1994 vide Exh.5. This fact found by the labour court from the inquiry papers at pg.21. Therefore, in the report submitted by the Depot Manager, Makkarpura against the respondent workman, this fact was mentioned that the respondent workman had already submitted leave report on 19th October, 1994 to the Depot Manager, Makkarpura. Therefore, the respondent workman submitted the leave report within two days to the petitioner Corporation and thereafter, he resumed the duty, at that time, produced medical certificate of Dr.Hasmukh Patel dated 7th December, 1994 for the period from 17th October to 8th November, 1994. This certificate was on record vide Exh.5 which was also produced at pg.23 of the inquiry papers before the petitioner Corporation. Therefore, the labour court has come to the conclusion that to remain absent for 23 days without prior permission on the ground of sickness cannot be considered to be serious misconduct. It is also necessary to note that misconduct alleged against the respondent workman to remain absent with effect from 17th October, 1994 without prior permission but the workman concerned has submitted report on 19th October, 1994 which was received by the Depot Manager. This fact remains undisputed from the record and subsequently at the time of resuming duty, the workman produced medical certificate in support of his sickness. The respondent workman had remained absent for a period 18th and 19th November, 1994 for personal reason as his wife was sick during this period. Therefore, the labour court has come to the conclusion that inquiry officer has ignored the papers which were on record including the leave report and the medical certificate of the respondent workman and therefore, come to the conclusion that misconduct is not found to have proved against the respondent workman. This aspect has been examined by the Apex Court in case of Union of India vs. Giriraj Sharma reported in AIR 1994 SC 215, wherein as per the Head Note, the Apex Cuort has held that Constitution of India - Articles 14 and 16 Disproportionate punishment, punishment of dismissal ground overstaying leave period by employee subsequent to order of rejection of application for extention of leave - no willful intention to flout the order of punishment, harsh and disproportionate, relief of reinstatement with all monetary and servie benefits granted with librty to visit minor punishment. The Apex Court has further observed that "the incumbent while admitting the fact

that he had over stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for overstaying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to willfully flout the order, but the circumstances force him to do so".

#. The labour court has also examined the relevant Clauses 11, 27 and 38 of Discipline and Appeal Procedure and come to the conclusion that the respondent workman has not received any order from the petitioner Corporation after receiving the leave report from the respondent workman that leave was not sanctioned by the Corporation. In absence of such orders, it was presumed by the labour court that leave was sanctioned by the Corporation for period from 17th October, 1994 to 8th November, 1994. Therefore, the labour court has considered that almost period of absent covered under the leave report and medical certificate and thereafter only for four days, which found without any report but for that, punishment of dismissal is considered to be harsh and unjustified by the labour court. The labour court has also considered that in pursuance of the order passed by the appellate authority, the respondent workman was prepared to resume the duty but the workman was not allowed by the petitioner Corporation and therefore, ultimately the respondent workman remained without any work because of decision of the corporation to insist to pay the fine of Rs.6000/- at a time but since the workman was not in position to pay Rs.6000/- at a time. Therefore, considering overall facts and situation of the case, the labour court has directed reinstatement with continuity and 50 % backwages of the interim period, according to my opinion, looking to the facts which are on record which has been appreciated by the labour court, view taken by the labour court is just, proper and fair. The award in question is reasoned award passed by the labour court and as such, no error seems to have committed by the labour court while granting the relief in favour of the respondent workman. There appears no jurisdictional error nor any procedural irregularity committed by the labour court and even learned advocate Mr.Rawal fails to point out any infirmity in the award in question and therefore, no interference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution.

Therefore, there is no substance in this petition which requires rejection at the threshold and the same is rejected accordingly.

Date : 5-4-2002 [H.K.Rathod, J.]

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